

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA

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FOLLOWING REPEAT STATE 109664 ACTION ATHENS 14 MAY 75

QUOTE

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E.O. 11652: N/A

TAGS: EAIR, XG

SUBJECT: CIVAIR - PAN AM COMMISSION

1. SERVERAL WEEKS AGO, PANAM INFORMED IATA THAT IT WAS WITHDRAWING FROM THE IATA RESOLUTION WHICH, INTER ALIA, SET THE COMMISSION RATE PAID TO TRAVEL AGENTS AT 7.0 PERCENT. PANAM ANNOUNCED INSTEAD THAT IT WOULD PAY A 3 PERCENT INCENTIVE (FOR TOTAL OF 10 PERCENT) FOR SALES BY A TRAVEL AGENT DURING A CURRENT PERIOD IN EXCESS OF 90 PERCENT OF ITS SALES FOR PANAM DURING THE SAME PERIOD A YEAR AGO. IT SAID IT WAS TAKING THESE ACTIONS BECAUSE OF WIDESPREAD ILLEGAL REBATING TO AGENTS, THE INABILITY OF IATA AND GOVERNMENTS TO STOP THESE PRACTICES, AND THE NEED TO PROTECT ITS OWN INTERESTS.

2. SUBSEQUENTLY, OTHER AIRLINES INVOKED AN IATA ESCAPE

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CLAUSE WHICH HAD THE EFFECT OF VOIDING THE IATA RESOLUTION

ON COMMISSIONS. IATA ATTEMPTED TO ADOPT A NEW RESOLUTION FOR A 7.5 PERCENT COMMISSION RATE, BUT IT FAILED OF ADOPTION DUE TO PANAM'S VETO. MANY AIRLINES, BUT NOT ALL AND EXCLUDING PANAM, ARE NOW OFFERING 7.5 PERCENT, EITHER VOLUNTARY OR BY GOVERNMENT DIRECTIVES.

3. PANAM HAS BEEN ORDERED OR PRESSED TO OFFER 7.5 PERCENT BY NUMBER OF GOVERNMENTS. SOME ASSERT THAT THEY HAVE DOMESTIC LEGISLATIVE OR REGULATORY AUTHORITY TO CONTROL COMMISSION RATES, SOME ASSERT THAT RATE ARTICLES IN BELATERAL AIR TRANSPORT AGREEMENTS ARE APPLICABLE, AND SOME MAKE BOTH ASSERTIONS. IN SOME SITUATIONS WHERE PANAM BELIEVES THAT GOVERNMENT DOES NOT HAVE DOMESTIC LEGAL AUTHORITY TO CONTROL COMMISSION RATES, IT IS REFUSING TO COMPLY. IT HAS TAKEN POSITION, SUPPORTED BY USG, THAT COMMISSION RATES ARE NOT PART OF TARIFF (SINCE THEY INVOLVE ARRANGEMENT WITH MIDDLEMEN, RATHER THAN PRICE PAID BY CONSUMER) AND THAT, THEREFORE, RATE ARTICLES IN BELATERAL AIR TRANSPORT AGREEMENTS ARE NOT APPLICABLE.

4. WHERE PANAM BELIEVES DOMESTIC LEGAL AUTHORITY IS PRESENT OR WHERE IT HAS CONCLUDED THAT ASSERTION OF SUCH AUTHORITY CANNOT EFFECTIVELY OR PRUDENTLY BE CHALLENGED, PANAM IS COMPLYING WITH GOVERNMENT ORDERS FOR SALES IN TERRITORY OF COUNTRY ISSUING ORDER INVOLVING TRANSPORTATION TO OR FROM THAT COUNTRY.

5. PANAM IS REFUSING TO COMPLY, HOWEVER, WITH REGARD SALES IN US OR THIRD COUNTRIES. DEPARTMENT IS SUPPORTING LATTER STAND ON GROUND THAT BELATERAL AIR TRANSPORT AGREEMENTS CANNOT BE CONSTRUED TO AUTHORIZE ACTIONS BY A FOREIGN GOVERNMENT AGAINST US FLAG AIRLINES BASED ON ATTEMPTS TO REGULATE COMMISSIONS PAID FOR RATES IN TERRITORY OF US OR THIRD COUNTRIES.

6. UK SITUATION IS MOST CRITICAL. UK HAS THREATENED REVOKE PANAM'S OPERATING RIGHTS AND IMPOUND ITS AIRCRAFT IF PANAM DOES NOT COMPLY WITH REGARD SALES OUTSIDE UK (PANAM HAS AGREED COMPLY FOR SALES IN UK). WE HAVE ADVISED UK OF USG POSITION (PARA 5 ABOVE) AND SAID WE LIMITED OFFICIAL USE

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EXPECT UK HAVE PRIOR CONSULTATIONS SHOULD IT CONTEMPLATE ACTION THREATENED. FYI. SITUATION COULD ESCALATE QUICKLY, WITH POSSIBILITY US RETALIATION END FYI.

7. USG HAS TAKEN NO POSITION ON MERITS OF DISPUTE. USG IS, OF COURSE, CONCERNED OVER APPARENT WIDESPREAD ILLEGAL REBATING AND THERE ARE PROPOSALS BEFORE CAB WHICH WOULD REQUIRE THAT COMMISSION RATES BE FILED WITH CAB AND

OBSERVED BY AIRLINES. HOWEVER, THERE IS APPARENTLY NO
STATUTORY BASIS FOR CAB TO APPROVE, DISAPPROVE, OR SUSPEND
RATES DECIDED BY AIRLINES.

8. FOREGOING IS FOR POSTS INFORMATION. POSTS SHOULD NOT
APPROACH FOREIGN GOVERNMENTS ON THEIR OWN INITIATIVE OR AT

PANAM BEHEST WIHOUT SPECIFIC INSTRUCTIONS FROM DEPARTMENT.
THEY MAY HOWEVER DRAW ON THIS MESSAGE IN CONTACTS WITH
PANAM REPSOR INFORMAL DISCUSSIONS WITH LOCAL AUTHORITIES.

UNQUOTE. KISSINGER

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